

1
2
3
4
5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
7

8 ADNAN KHAN,

No. C 10-3949 SI

9 Petitioner,

**ORDER DENYING MOTION FOR
RECONSIDERATION**

10 v.

11 RAUL LOPEZ, Warden

12 Respondent.
13 _____/

14 Adnan Khan filed an action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254 . On
15 August 5, 2013, the Court denied the petition and denied a certificate of appealability, finding that
16 petitioner had failed to demonstrate that the state court’s decision rejecting his claims was contrary to,
17 or an unreasonable application of, clearly established Supreme Court precedent. *See* Docket No. 23
18 (“Order”). Currently before the Court is Khan’s motion for reconsideration of the Order. For the
19 reasons discussed below, the Court DENIES petitioner’s motion for reconsideration.
20

21 **LEGAL STANDARD**

22 “Reconsideration is appropriate if the district court (1) is presented with newly discovered
23 evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an
24 intervening change in controlling law.” *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th
25 Cir. 1993). Reconsideration should be used conservatively, because it is an “extraordinary remedy, to
26 be used sparingly in the interests of finality and conservation of judicial resources.” *Carroll v.*
27 *Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (quoting 12 James Wm. Moore et al., Moore’s Federal
28 Practice § 59.30[4] (3d ed. 2000)). A motion for reconsideration may not be used to present arguments

1 that were presented initially or “reasonably could have been raised” during the initial motion. *Id.* The
2 district court has discretion to deny a motion for reconsideration. *Kona Enterprises, Inc. v. Estate of*
3 *Bishop*, 229 F.3d 877, 883 (9th Cir. 2000).

4 Civil Local Rule 7-9 requires that parties request leave of the court to file a motion for
5 reconsideration. Movants are prohibited from repeating any argument made previously, and must show
6 a material difference or an intervening change in the facts or the law, or a manifest failure by the court
7 to consider dispositive facts or legal arguments. Civ. L.R. 7-9.

8 9 DISCUSSION

10 As an initial matter, the Court notes that Khan failed to comply with Civil Local Rule 7-9, and
11 request the Court for leave to file a motion for reconsideration. However, even if the motion were
12 properly before the Court, it must be denied. Petitioner has failed to make any showing that there has
13 been newly discovered evidence, a clear error by the Court, or an intervening change in controlling law.

14 Khan argues (1) that the Court failed to decide his central claim that the trial court’s jury
15 instructions and restrictions on his arguments violated his constitutional right to present a defense; and
16 (2) that the trial court failed to decide his claim that the court’s jury instructions erroneously described
17 an element of the offense. Motion for Reconsideration (“Motion”) at 2, 5.


18 Petitioner’s arguments misconstrue the court’s role on habeas review, which is not to reexamine
19 state court determinations on state law questions, but to decide whether the state court unreasonably
20 applied clearly established Supreme Court authority in adjudicating his claims. 28 U.S.C. § 2254(d).
21 There is no clearly established federal law providing that the trial court’s discretionary decision to
22 exclude evidence from a criminal trial violates a defendant’s right to present a defense, nor did the state
23 appellate court unreasonably determine that the trial court properly instructed the jury on the elements
24 of felony murder. As discussed in the Court’s Order, the trial court’s exclusion of evidence and its
25 instructions to the jury are matters of state law, and the state appellate court’s rejection of these claims
26 did not involve an unreasonable application of Supreme Court precedent. Order 8-14

27 Petitioner’s motion presents no newly-discovered evidence, does not demonstrate that the court
28 committed clear error or that its decision was manifestly unjust, nor does it show that there was an

1 intervening change in the controlling law. For the foregoing reasons, petitioner's motion for
2 reconsideration is DENIED.

3
4 **IT IS SO ORDERED.**

5
6 Dated: September 3, 2013



SUSAN ILLSTON
United States District Judge